

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.85 relating to Department Advisory Committees to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §1.85 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

DocuSigned by:



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Director, Public Transportation Division

Recommended by:

DocuSigned by:



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Executive Director

115904 Dec. 10, 2020

Minute
Number

Date
Passed

Proposed Preamble

The Texas Department of Transportation (department) proposes amendments to §1.85, concerning Department Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The Texas Transportation Commission (commission) charged the TxDOT Bicycle Advisory Committee (BAC) with reviewing and making recommendations on "...expanding the charge of the committee to address a wider range of related transportation service options, including pedestrian options and personal mobility devices ..." through Minute Order 115565 - August 29, 2019.

The BAC discussed both the complementary elements and unique differences between the bicycle, pedestrian, and personal mobility modes including their function, funding, use of infrastructure, and representation. After careful deliberation, the BAC determined that including representatives of and discussion on these additional modes during committee efforts would lead to a better understanding of issues and more balanced, inclusive recommendations for all modes.

The commission is amending §1.85, Department Advisory Committees, to expand the scope of the BAC to include pedestrian issues and the consideration of personal mobility devices, which are also referred to as micromobility devices, as they relate to bicycle and pedestrian issues. Currently, no TxDOT advisory committee is specifically charged with considering pedestrians

1 or personal mobility devices. Additionally, revisions to the
2 BAC's duties are proposed to provide committee input on the
3 current federal bicycle and pedestrian infrastructure funding
4 program.

5
6 Amendments to §1.85 (a)(3), Bicycle Advisory Committee, make
7 various changes to the paragraph.

8
9 Subparagraph (A), Purpose, is amended to change the committee's
10 name to Bicycle and Pedestrian Advisory Committee, to add
11 pedestrians' issues as part of the committee's purpose, and to
12 change the name of the funding program to reflect the current
13 federal bicycle and pedestrian infrastructure funding source.

14
15 Amendments to subparagraph (B), Duties, make various changes to
16 organization and content of the current subparagraph. Clauses
17 (i) and (iii) are interchanged. The content of former clause
18 (iii), which is now clause (i), is amended to include
19 pedestrians' issues. Clause (ii) is amended to reflect the
20 current federal bicycle and pedestrian infrastructure funding
21 program. Clause (iii) is former clause (i) with no change to
22 its substance. Clause (iv) is new and adds the duty to review
23 and consider how personal mobility devices relate to bicycling
24 and pedestrian issues and to other road users.

25
26 A new subparagraph (C), Committee membership composition, is
27 added to provide guidelines for the composition of the

committee's membership reflecting a diverse mix of bicycle and pedestrian stakeholders, including stakeholders representing the interest of persons with disabilities, and people knowledgeable about personal mobility device issues.

Current subparagraph (C), Manner of reporting, is redesignated as subparagraph (D) and amended to reflect the current federal bicycle and pedestrian infrastructure funding program.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in

1 which the proposed rules are in effect, the public benefit
2 anticipated as a result of enforcing or administering the rules
3 will be a better understanding of pedestrian and personal
4 mobility device issues resulting in more balanced, inclusive
5 recommendations for all modes within the BAC's scope.

6
7 COSTS ON REGULATED PERSONS

8 Eric Gleason has also determined, as required by Government
9 Code, §2001.024(a)(5), that for each year of that period there
10 are no anticipated economic costs for persons, including a state
11 agency, special district, or local government, required to
12 comply with the proposed rules and therefore, Government Code,
13 §2001.0045, does not apply to this rulemaking.

14
15 ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

16 There will be no adverse economic effect on small businesses,
17 micro-businesses, or rural communities, as defined by Government
18 Code, §2006.001, and therefore, an economic impact statement and
19 regulatory flexibility analysis are not required under
20 Government Code, §2006.002.

21
22 GOVERNMENT GROWTH IMPACT STATEMENT

23 Eric Gleason has considered the requirements of Government Code,
24 §2001.0221 and anticipates that the proposed rules will have no
25 effect on government growth. He expects that during the first
26 five years that the rule would be in effect:

- 27 (1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.85 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "*Bicycle Advisory Committee Scope Rule Revisions.*" The deadline for receipt of comments is 5:00 p.m. on January 25, 2021. In accordance with Transportation Code, §201.811(a)(5), a

1 person who submits comments must disclose, in writing with the
2 comments, whether the person does business with the department,
3 may benefit monetarily from the proposed amendments, or is an
4 employee of the department.

5
6 STATUTORY AUTHORITY

7 The amendments are proposed under Transportation Code, §201.101,
8 which provides the Texas Transportation Commission (commission)
9 with the authority to establish rules for the conduct of the
10 work of the department, and more specifically, Transportation
11 Code, §201.117, which provides the commission with the authority
12 to establish advisory committees.

13
14 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
15 Transportation Code, §201.117.

SUBCHAPTER F. ADVISORY COMMITTEES

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a transportation project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

1 (i) maintain community and local government
2 communication; and

3 (ii) respond in a timely fashion to affected
4 parties' concerns about project development and construction.

5 (C) Manner of reporting. A project advisory
6 committee shall report its advice and recommendations to the
7 district engineer.

8 (D) Duration. A project advisory committee may
9 be abolished at any stage of project development, but in no
10 event may a committee continue beyond completion of the project.

11 (2) Rulemaking advisory committees.

12 (A) Purpose. The commission, by order, may
13 create ad hoc rulemaking advisory committees pursuant to
14 Government Code, Chapter 2001, §2001.031, for the purpose of
15 receiving advice from experts, interested persons, or the
16 general public with respect to contemplated rulemaking.

17 (B) Duties. A rulemaking advisory committee
18 shall provide advice and recommendations with respect to a
19 specific contemplated rulemaking.

20 (C) Manner of reporting. A rulemaking advisory
21 committee shall report its advice and recommendations to the
22 division responsible for the development of the rules.

23 (D) Duration. A rulemaking committee shall be
24 abolished upon final adoption of rules by the commission.

25 (3) Bicycle and Pedestrian Advisory Committee.

1 (A) Purpose. The purpose of the Bicycle and
2 Pedestrian Advisory Committee is to advise the commission on
3 bicycle and pedestrian issues. The committee will also advise
4 the commission on [and] matters related to the Transportation
5 Alternatives [Safe Routes to School] Program. By involving
6 representatives of the public, including bicyclists,
7 pedestrians, and other interested parties, the department helps
8 ensure effective communication with the bicycle and pedestrian
9 communities [community], and that the bicyclist's and
10 pedestrian's perspectives [perspective] will be considered in
11 the development of departmental policies affecting bicycle use
12 and pedestrian activity, including the design, construction, and
13 maintenance of highways. ~~[The committee will also provide~~
14 ~~recommendations to the department on the Safe Routes to School~~
15 ~~Program].~~

16 (B) Duties. The committee shall:

17 (i) review and make recommendations on items
18 of mutual concern between the department and the bicycling and
19 pedestrian communities;

20 (ii) provide recommendations on the
21 selection criteria for project applications for funding [of
22 projects] under Chapter 11 [25], Subchapter G [H] of this title
23 (relating to the Transportation Alternatives Set-Aside [Safe
24 Routes to School] Program); ~~[and]~~

(iii) in accordance with Transportation Code, §201.9025, advise and make recommendations to the commission on the development of bicycle tourism trails; and

(iv) review and consider how personal mobility, or micromobility, devices relate to bicycling and pedestrian issues and to other road users [~~review and make recommendations on items of mutual concern between the department and the bicycling community~~].

(C) Committee membership composition. Committee membership will reflect a diverse mix of bicycle and pedestrian stakeholders, including stakeholders representing the interests of persons with disabilities, and people knowledgeable about micromobility issues.

(D) Manner of reporting. The committee shall report its advice and recommendations to the commission, except for matters relating to the Transportation Alternatives [~~Safe Routes to School~~] Program. Under the Transportation Alternatives [~~Safe Routes to School~~] Program, the committee shall report [~~reports~~] its recommendations to the director of the division responsible for administering the program.

(4) Freight Advisory Committee.

(A) Purpose. The purpose of the Freight Advisory Committee is to serve as a forum for discussion regarding transportation decisions affecting freight mobility and promote the sharing of information between the private and public sectors on freight issues. The committee's advice and

1 recommendations will provide the department with a broad
2 perspective regarding freight transportation matters and assist
3 in identifying potential freight transportation facilities that
4 are critical to the state's economic growth and global
5 competitiveness.

6 (B) Duties. The committee shall:

7 (i) provide advice regarding freight-related
8 priorities, issues, projects and funding needs;

9 (ii) make recommendations regarding the
10 creation of statewide freight transportation policies and
11 performance measures;

12 (iii) make recommendations regarding the
13 development of a comprehensive and multimodal statewide freight
14 transportation plan; and

15 (iv) communicate and coordinate regional
16 priorities with other organizations as requested by the
17 department.

18 (C) Manner of reporting. The committee shall
19 report its advice and recommendations to the executive director
20 or a department employee designated by the executive director
21 and shall make reports to the commission as requested.

22 (b) Operating procedures.

23 (1) Membership. Except as otherwise specified in this
24 section, an advisory committee shall be composed of not more
25 than 24 members to be appointed by the division or official to
26 whom the committee is to report. When applicable to the purpose

1 and duties of the committee, the membership shall provide a
2 balanced representation between:

3 (A) industries or occupations regulated or
4 directly affected by the department; and

5 (B) consumers of services provided either by the
6 department or by industries or occupations regulated by the
7 department.

8 (2) Meetings.

9 (A) An advisory committee shall meet once a
10 calendar year and at such other times as requested by the
11 division to which it reports.

12 (B) A majority of the membership of an advisory
13 committee constitutes a quorum. A committee may take formal
14 action only by majority vote of its membership.

15 (3) Officers. Each committee shall elect a chair and
16 vice-chair by majority vote of the members of the committee.

17 (c) Reimbursement. The department may, if authorized by
18 law and the executive director, reimburse a member of a
19 committee for reasonable and necessary travel expenses. Current
20 rules and laws governing reimbursement of expenses for state
21 employees shall govern reimbursement of expenses for advisory
22 committee members.